In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 949

WOODROW WILSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 14-19; R. IV, 1-6), is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 15, 1965 (R. IV, 7). A petition for rehearing was denied on December 30, 1965 (R. IV, 8-11). The petition for a writ of certiorari was filed on January 26, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a record made in the regular course of business should have been excluded as evidence because of an ambiguity.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Missouri, petitioner was convicted of perjury, in violation of 18 U.S.C. 1621, while testifying under oath at a hearing conducted by a trial examiner of the National Labor Relations Board (R. I, 1-3, 24). He was sentenced to imprisonment for 30 months (R. I, 30). On appeal (R. I, 35) the court of appeals affirmed (R. IV, 7).

On May 9, 1962, petitioner was the business representative and president of Local 916 of the International Hod Carriers and Common Laborers Union at St. Marys, Missouri (Tr. 214),[1] and Keeble was the secretary-treasurer.[2] At about 8:00 a.m. on that date violence erupted at the Allen Farm near Ellington, Missouri, as a result of the union's efforts to organize a construction crew of which Langston was the supervisor (Tr. 91-92, 129-131, 139-141, 185, 201-202).

Following the violence, Langston filed an unfair labor practice complaint against the union with the National Labor Relations Board, and a hearing was

---

[1] "Tr." refers to the trial transcript contained in Volumes II and III of the record.

[2] Keeble's conviction on a similar perjury charge was affirmed in *Keeble* v. *United States*, 347 F.2d 951 (C.A. 8), certiorari denied, December 6, 1965, No. 575, O.T. 1965.

held at Ellington in October, 1962 (Tr. 2-4; Gov. Ex. 1). During the hearing it became relevant to the issue of the union's fault to know whether its officers had been in the vicinity of the Allen Farm when the violence occurred. In sworn testimony, petitioner denied ever appearing at the Allen Farm on May 9 (Tr. 10; Gov. Ex. 1). He testified that on that date he and Keeble were at a wayside park near Ellington at about 6:15 a.m., where they received some union authorization cards from Larkin, a foreman of one of the construction crews (Tr. 7-8). He further testified that at about 6:30 a.m., he and Keeble left the park and drove 50 miles to the Taum Sauk Hydroelectric Dam project, where they arrived at about 8:15 a.m. (Tr. 8-9, 11-13). It is this testimony which the indictment charged as false and perjurious (R. I, 1-3).

At the trial, three eyewitnesses testified that they saw petitioner either at the wayside park at about 7:30 a.m., or at the Allen Farm about 30 minutes later when the violence erupted (Tr. 88, 93, 134, 136, 139-140, 180, 185). In addition, the visitor's log at the Taum Sauk project, dated May 9, 1962, was introduced in evidence as a record kept in the ordinary course of business. The log entries were recorded by the guard at the main gate, who had no independent recollection of the time when petitioner and Keeble arrived and departed (Tr. 61). A log entry showed, however, in contradiction to petitioner's sworn testimony before the Board, that he and Keeble had arrived at the Taum Sauk project at 10:40 a.m. on May 9 and departed at 12:30 p.m. (Tr. 49-50). On the sec-

ond sheet of the log there appeared the letters "Mon" in the handwriting of the guard, although May 9, 1962, was a Wednesday (Tr. 34-35, 52-53). The guard testified that he could not remember why he placed the letters "Mon" on the second page of the log (Tr. 72-73, 77-78); nor could he remember the reason for an erasure in the "Time Out" block next to Keeble's name (Tr. 67-68). Petitioner objected to the admission of the log into evidence on the ground that it had not been properly identified and a proper foundation for its introduction had not been laid (Tr. 24-26, 50; Gov. Ex. 3). Petitioner testified that, in fact, he had left the wayside park at 6:30 a.m. on May 9, that he had arrived with Keeble at the main gate of the Taum Sauk project a little after 8:00 a.m., and had left the project about 10:30 a.m. (Tr. 216-219, 222).

ARGUMENT

The admissibility in evidence of the log entries involved in this case was unsuccessfully challenged by Keeble on appeal from his prior conviction for the same offense. See *Keeble* v. *United States*, 347 F. 2d 951 (C.A. 8), certiorari denied, December 6, 1965, No. 575, O.T. 1965. Petitioner argues that his case is distinguishable from the *Keeble* decision because petitioner interposed a specific objection to the log's admissibility, whereas no objection had been raised at Keeble's trial. The log was, however, a record kept in the ordinary course of business by the operators of the Taum Sauk project. The application of that excep-

tion to the hearsay rule, as distinguished from the weight to be accorded to the evidence, did not depend upon the log's freedom from ambiguity. *La Porte* v. *United States*, 300 F. 2d 878, 880 (C.A. 9). The remaining question—whether the log should be taken to refer to activities on May 9, 1962, the date it bore, in light of the unexplained notation "Mon" on the second page of the log and the fact that May 9 was a Wednesday—was a question properly left to the jury by the trial court. The jury had the log before them; there was vigorous cross-examination of the guard who made the log entries regarding the meaning of the notation "Mon," and the jury might, in addition, have found it significant that petitioner admitted being at the Taum Sauk project on May 9 while he made no claim that he had been there on Monday, May 7.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

FEBRUARY 1966.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 208046 607